IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

Writ Appeal No.689/2002

1.Bharat Heavy Electricals Ltd.,
rep. By its Executive Director,
Tiruchirappalli 620 014.

2.General Manager/Engg. & R.D. Coordination,
Bharat Heavy Electricals Ltd.,
Tiruchirappalli 620 014. ... Appellants

Vs.

Kalaiselvi Pandian ... Respondent

Appeals filed clause 15 of Letter Patent against the order passed by this Court dated 07.02.2002, passed in W.P.No.11838/1996.under article 226 constitution of india to issue a writ of certiorari calling for the records relating to BP:P2:2182629 dated 17.8.1996 on the files of the 1st respondent and quash the same

For appellant : Mr.B.T.Seshadri
For Respondents : Mrs.Rita Chandrasekar
for M/s.Aiyar and Dolia

J U D G M E N T

R.BANUMATHI, J.

This Writ Appeal is preferred against the order of the learned Single Judge made in W.P.No.11838/1996 dated 07.02.2002, setting aside the order of dismissal of the respondent.

2.Brief facts giving rise to this appeal are that : the respondent joined the service of the appellant Company - Bharat Heavy Electricals Limited ['BHEL', for short], a Government of India Undertaking, as Engineer Trainee on 15.12.1983 for a period of one year with effect from 25.11.1983. On completion of the training, the respondent was absorbed as Product Engineer by order dated 06.03.1985 with effect from 25.11.1984. At the time of the said appointment, the respondent had stated in the application that she belonged to Scheduled Tribe and she has also produced a Community Certificate issued by the Tahsildar which stated that she belonged to Konda Reddy community [ST]. Subsequently, in the Attestation Form filed by the respondent, she has stated that she does not belong to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

SC/ST Community. In view of such misrepresentation, action was taken against the respondent for giving such wrong declaration. Since the petitioner admitted the mistake, at that time, the Competent Authority took a lenient view in the matter and imposed the punishment of delaying her promotion to the next higher Grade by two years beyond the normal eligibility period.

3.The respondent preferred an appeal to the Appellate Authority/Executive Director requesting for reconsidering the punishment imposed on her. After perusing the records, the Appellate Authority took a different view and stating that the appointment itself was secured on the basis of wrong declaration and that the respondent is not entitled to continue in service, the Appellate Authority passed the impugned Order of dismissal on 17.08.1986. The order of dismissal passed by the Appellate Authority was challenged by the respondent by way of Writ Petition.

4.The learned Single Judge took the view that it is not the case of BHEL that the petitioner was appointed as Junior Trainee only as against ST vacancy. The learned Single Judge was of the view that the impugned Order enhancing the penalty of dismissal imposed on the petitioner cannot be sustained on the ground of violation of Principles of Natural Justice. The learned Single Judge observed that when the petitioner sought for lesser punishment, strangely, after eight years, the Appellate Authority imposed extreme penalty of dismissal from service and that too without giving any opportunity to the respondent, which is unsustainable and the learned Judge allowed the Writ Petition.

5.Assailing the order, Mr.B.T.Seshadhri, the learned Counsel for the appellant submitted that respondent was appointed in Scheduled Tribe quota and when such appointment was made on fraudulent representation, appointment is ab initio void. Placing reliance upon 2007(4) CTC 427 [Additional General Manager/Human Resource Bharat Heavy Electricals Ltd., v. Suresh Ramkrishna Burde], the learned Counsel submitted that the respondent having been appointed as against ST quota, cannot be allowed to retain the benefit. Submitting that there cannot be any misplaced sympathy or generosity, the learned Counsel further urged that when the respondent had secured an appointment on the basis of false Community Certificate, the very appointment is invalid and there is no question of any reasonable period for initiation of the proceedings.

6.Per contra, the learned Counsel for the respondent employee Ms.Rita Chandrasekaran submitted that the impugned Order of dismissal from service came to be passed nearly after eight years and taking note of delay in passing the impugned Order, the learned Single Judge has rightly set aside the impugned Order of dismissal and the same cannot be interfered with.

7.In order to appreciate the rival submissions, there are some factual aspects which need to be noted. When the respondent employee was appointed in service as Junior Engineer Trainee, in her application, she has stated that she belongs to Scheduled Tribe Community. In Column No.11, the respondent has stated that she belongs to ST Community - Konda Reddy [ST]. Her appointment was headed by the Selection Board comprising

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of Shri Vimal Chandra, Ex.Deputy Commissioner of SC/ST, and the proceedings of the Board confirm that the respondent was appointed as against ST quota. Per contra, in the Attestation Form, in column 9(b), respondent has stated that she is not a member of Scheduled Caste/Scheduled Tribe. Respondent was absorbed with effect from 25.11.1984 and placed on probation for a period of one year. Noticing wrong declaration made in respect of community, when the respondent was asked for explanation about the wrong declaration she has admitted the mistake. Hence by order dated 05.06.1985, a lenient view was taken in the matter, delaying her promotion to the next higher Grade by two years, beyond the normal eligibility period. The respondent was also warned that she should take particular care to ensure that such acts of negligence are not repeated by her.

8.The respondent preferred appeal before the Appellate Authority/ Executive Director stating that her father was illiterate and influenced by some bad elements, got a community Certificate, wrongly declaring the caste and that she was not aware of the Community mentioned in the certificate. Accepting her mistake and stating that she has passed her Engineering Degree in First class with Distinction and that she has not availed any concession using the Community Certificate, the respondent requested the Appellate Authority to reconsider the punishment imposed on her. Though in her representation dated 20.07.1988 the respondent has stated that she has not availed any concession, the fact remains that the respondent was appointed only against the ST vacancy. In our view, the learned Single Judge was not right in saying that "it is not the case of BHEL that the petitioner was appointed as Engineer Trainee only against vacancy earmarked for the ST Community". When the respondent has admitted that, influenced by some bad elements, her father had obtained a community certificate wrongly declaring the caste the admission of producing a false community certificate is writ large. When respondent has produced a false community certificate, the very foundation of the appointment falls and her appointment is not valid in the eye of law.

9.In Bank of India v. Avinash D.Mandivikar, 2005 (7) SCC 690, the employee had got an appointment on 15.10.1976, on a post which was reserved for a member of Scheduled Tribe. The Scrutiny Committee invalidated the Caste Certificate on 18.7.1987 which was challenged by the employee. After several rounds of litigation his services were terminated on 28.2.2002. After referring to the decision in the case of State of Maharashtra v. Milind [2001(1) SCC 4] and some other decisions, the Supreme Court allowed the appeal of the employer, affirming the order of termination of service of the employee. Paragraph 6 of the report where the principle was laid down reads as under :-

> "6.Respondent No.1 - employee obtained appointment in the service on the basis that he belonged to Scheduled Tribe. When the clear finding of the Scrutiny Committee is that he did not belong to Scheduled Tribe, the very foundation of his appointment collapses and his appointment is no appointment in the eyes of law. There is absolutely no justification of his claim in respect of post he usurped, as the same was meant for reserved candidate".

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10.Stand of respondent employee is to the effect that she has put in long service and that the impugned Order of dismissal from service came to be passed nearly eight years after her representation before the Appellate Authority, and therefore, taking note of the delay, the learned Single Judge has rightly set aside the dismissal order and such an equitable order cannot be interfered with. A similar plea of long years of service was considered and negatived by the Supreme Court in 2004 (2) SCC 105 [R.Viswanatha Pillai v. State of Kerala]. In paragraph 19, the Supreme Court has held :-

> "19.It was then contended by Shri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We do not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and non est in the eye of law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserve any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims, cannot plead equity nor would the Court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practising fraud.

11.Observing that when fraud is perpetrated, the parameters of consideration will be different, in 2005 (7) SCC 690 [Bank of India and anr. v. Avinash D.Mandivikar and ors.], the Hon'ble Supreme Court has held that mere delay in making reference would not invalidate the order of the Scrutiny Committee and held as follows :-

> "11. .... The matter can be looked from another angle. When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. This Court in 2005(7) SCC 605, Bhaurao Dagdu Paralkar v. State of Maharashtra dealt with the effect of fraud. It was held as follows in the said Judgment :

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"12[14]. .... 'Fraud is proved when it is shown that a false representation has been made (i)knowlingly, or (ii)without belief in its truth, or (iii)recklessly, careless whether it be true or false'.

13[15]. This aspect of the matter has been considered by this Court in Roshan Deen v. Preeti Lal [2002 (1) SCC 100], Ram Preeti Yadav v. U.P.Board of High School and Intermediate Education [2003 (8) SCC 311], Ram Chandra Singh v. Savitri Devi [2003 (8) SCC 319], and Ashok Leyland Ltd.,v. State of TN [2004(3) SCC 1].

14[16].Suppression of a material document would also amount to a fraud on the Court. (See Gowrishankar v. Joshi Amba Shankar Family Trust [1996(3) SCC 310] and S.P.Chengalvaraya Naidu case [1994(1) SCC 1].

15[17]. 'Fraud' is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not a fraud but it can be evidence on fraud; as observed in Ram Preeti Yadav case.

16[18].In Lazarus Estates Ltd. v. Beasley [1956(1) QB 702], Lord Denning observed at QB pp 712 and 713 : (All ER P.345-C)

'No Judgment of a Court, no Order of a minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.'

In the same Judgment, Lord Parker, L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.

[19].These aspects were recently highlighted in State of Andhra Pradesh v. T.Suryachandra Rao [2005 (6) SCC 149].

Therefore, mere delayed reference when the foundation for the same is alleged fraud does not in any way affect the legality of the reference".

Mere delay in passing order of dismissal from service does not suffer from infirmity and in our considered view, the learned Single Judge ought not to have interfered with the order of dismissal.

12.In 2007(4) CTC 427 [Additional General Manager/Human Resource Bharat Heavy Electricals Ltd., v. Suresh Ramkrishna Burde], the respondent therein Suresh Ramkrishna Burde, claiming himself to be belonging to Halba Scheduled Tribe, and after submitting a certificate to the said effect, got an appointment in BHEL, Hyderabad as a Clerk on 31.05.1982, on a post which was reserved for a person belonging to Scheduled Tribe. After receiving complaints about the caste certificate produced by the respondent, BHEL referred the matter for verification to the District Collector, Nagpur, on 30.03.1991 and also to the Scrutiny Committee. After thorough verification, the Scrutiny Committee passed the order on 30.08.1995 that the respondent did not belong to the Scheduled Tribe and that the Caste Certificate submitted by him was false. Observing that when there is no escape from the conclusion that the respondent secured appointment on a post which was reserved for Scheduled Tribe by producing a false Community Certificate, the Supreme Court, holding that his services are liable to be terminated, observed as follows :-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"12.The principle, which seems to have been followed by this Court is, that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated..... .

13.In the case on hand the respondent got appointment on 31.5.1982 on a post, which was reserved for a member of Scheduled Tribe. On receiving complaints the employer referred the matter to the District Collector, Nagpur and also to Scrutiny committee in March, 1991. The subsequent period has been spent in making enquiry and in litigation as the respondent filed three Writ Petitions. In view of the principle laid down by this Court we are clearly of the opinion that his services were rightly terminated by the appellant and the High Court was in error in directing his reinstatement. The order passed by the High Court, therefore, has to be set aside."

13. In Suresh Ram Krishna Burde's Case, the Supreme Court distinguished the facts of the case with State of Maharashtra v.Milind [2001(1) SCC 4], where the Supreme Court took the view that a person who got admission in a professional course like Engineering or MBBS and has successfully completed the course after studying for the prescribed period, and has passed the examination, on such special facts, he may be considered on a different footing. Since huge amount of public money is spent in imparting education in a professional college, the Supreme Court in Milind case, took the view that the skill acquired by him could be utilized by the society and in such cases, the students may not be stripped of the professional degree which he has obtained by having secured admission by producing a false certificate. In our view, the present respondent cannot take advantage of the principles laid down in Milind case.

14.When falsehood of the Caste Certificate submitted by the respondent has been admitted by her, edifice of the appointment falls. Passage of time was not an impediment for taking action and passing order of dismissal. Drawing our attention to the order of the learned Single Judge, learned Counsel for the respondent has submitted that when the respondent has submitted the representation to the Appellate Authority for reconsideration of the punishment imposed, the Appellate Authority was not justified in enhancing the punishment and imposing the extreme penalty of dismissal from service, which amounts to blatant violation of Principles of Natural Justice. In our considered view, when the very foundation of the appointment goes, the respondent cannot be heard to complain that she was not afforded opportunity before passing the impugned Order.

15.It is trite law that Principles of Natural Justice cannot be put in a straight jacket formula. In 1977 (2) SCC 256 [The Chairman, Board of Mining Examination and Chief Inspector of Mines and another v. Ramjee], the Supreme Court held as follows :

" ..... Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical or fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt - that is the conscience of the matter".

16.In 2006(8) SCC 776 [P.D.Agarwal v. State Bank of India], this Court observed :

"30.The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change."

The Supreme Court has further observed :

"39.Decision of this Court in S.L.Kapoor v. Jagmohan 1980 (4) SCC 379 whereupon Mr.Rao placed strong reliance to contend that non-observance of the Principles of Natural Justice itself causes prejudice or the same should not be read 'as it causes difficulty of prejudice', cannot be said to be applicable in the instant case. The Principles of Natural Justice, as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K.Sharma 1996 (3) SCC 364 and Rajendra Singh v. State of M.P. [1996(5) SCC 460], the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the Principles of Natural Justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula. (See Viveka Nand Sethi v. Chairman, J&K Bank Ltd., 2005(5) SCC 337 and State of U.P. v. Neeraj Awasthi 2006 (1) SCC 667. See also Mohd. Sartaj v. State of U.P. 2006(2) SCC 315".

17.In Punjab National Bank v. Manjeet Singh [2006(8) SCC 647], the Supreme Court opined :

"The Principles of Natural Justice were also not required to be complied with as the same would have been an empty formality. The Court will not insist on compliance with the Principles of Natural Justice in view of the binding nature of the award. Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the Principles of Natural Justice".

Since furnishing of false Community Certificate was admitted by the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

respondent, the Principles of Natural Justice were also not required to be complied with, as the same would have been an empty formality.

18. In our opinion, in a case of this nature, the principles of equity will have no role to play. Sympathy, as is well known, should not be misplaced. We have no doubt in our mind that sympathy by itself cannot be a ground for interfering with the order of dismissal where the respondent has secured the job as against the Scheduled Tribe quota. For the foregoing discussion, the order of the learned Single Judge is liable to be set aside.

19.For the foregoing reasons, this appeal is allowed. The order of the learned Single Judge in W.P.No.11838/1996, which is under challenge in the present appeal is set aside. The Writ Petition filed by the respondent is dismissed. No costs. W.A.M.P.No.1841/2002 is closed.

tar

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Executive Director,
   Bharat Heavy Electricals Ltd.,
   Tiruchirappalli 620 014.

2. The General Manager/Engg.& R.D.Coordination,
   Bharat Heavy Electricals Ltd.,
   Tiruchirappalli 620 014.

+ 1 cc to Mr.B.T.Seshadri Advocate SR.NO.61948
+ 1 cc to M/s. Aiyar & Dolia Advocate SR.NO.62031

MS(CO)
RD 17.10.07

W.A. No.689/2002

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/